

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105

Section 2696.1 INSURANCE MEDIATION PROGRAM

INITIAL STATEMENT OF REASONS

File No. RH03030123

Date: August 11 2006

California Insurance Commissioner John Garamendi will hold a public hearing to consider amendments to the regulations governing the procedure for Earthquake and Automobile Collision and Physical Damage Claims, specifically considering the amendment of Title 10, California Code of Regulations, Chapter 5, Subchapter 7.6, Sections 2696.1 through 2696.10.

STATEMENT OF SPECIFIC PURPOSE

SB 708, enacted in 2001 and effective January 1, 2002 amended existing law to expand the earthquake mediation program to be applicable to automobile collision coverage and automobile physical damage coverage disputes. SB 64, effective on August 30, 2004 amended existing law to expand the mediation program to include residential property losses, other than earthquake losses, for which the Governor has declared a state of emergency pursuant to Government Code Section 8558. The was again modified with the enactment of SB 2 in 2005, effective January 1, 2006 that replaced the terms “residential property losses” with “homeowners’ losses” due to a fire. Homeowners insurance is described in California Insurance Code Section 675(a). These amendments to the Earthquake mediation regulations are necessary to properly administer the mediation program. These amendments are also needed in order for the Department to maintain consistency with Insurance Code Section 10089.70 et. seq.

The proposed amendments add automobile collision and physical damage claims and homeowners’ claims due to a fire including payments beyond policy limits, subject to certain conditions, to the types of disputes subject to mediation. Additionally, the proposed amendments include definitions of new terms, delete sections relating to procedure that do not enhance or clarify existing law, clarify some existing procedures and make other non-substantive changes for purposes of clarity and simplification.

California Code of Regulations section 2696.1 – Amend

The proposed amendments add homeowners and automobile collision and physical damage claims to the categories of claims that are subject to the Department’s mediation program. The purpose of the proposed amendments to this subsection is to clarify that the Department’s mediation program will apply to homeowners and automobile collision and physical damage claims. These amendments are necessary to allow the Department to meet the mandate of SB 708, SB 64 and SB 2 and to implement CIC section 10089.

California Code of Regulations section 2696.2 – Amend and add new subsection (l)

These proposed amendments add homeowners and automobile collision and physical damage claims to the definitions used in the regulations and specifically identifies these claims as

appropriate for mediation. The purpose of the proposed amendments is to specifically add homeowners and automobile collision and physical damage claims to the mediation program pursuant to Insurance Code 10089.70. These amendments are necessary to maintain consistency with Insurance Code section 10089.70

California Code of Regulations section 2696.3 – Amend

This proposed amendment deletes a subsection identifying what types of disputes are appropriate for mediation. The purpose of this proposed amendment is to delete language which was added to sections 2696.1 and 2696.2. The proposed amendment is necessary to prevent confusion and promote clarity in the regulations by changing the language from what claims are appropriate for mediation to what claims are not appropriate for mediation.

California Code of Regulations section 2696.4. – Delete existing text

The proposed amendment deletes the entire subsection as it simply repeats existing law and serves not meaningful purpose. This proposed amendment is necessary to simplify the mediation process.

California Code of Regulations section 2696.5 – Renumber to 2696.4

California Code of Regulations section 2696.6 – Amend and Renumber to 2696.5

This amendment renumbers the section as well as deletes the term service and replaces it with issuance. The purpose of this amendment is to replace a formal procedure with an informal one and to promote the use of the mediation program. The proposed amendment is necessary to clarify that a formal order need not be served in order to compel mandatory participation in the mediation process.

California Code of Regulations section 2696.7 – Amend and Renumber to 2696.6

This proposed amendment deletes reference to section 2696.8. The deleted language referred to a subsection which is proposed to be deleted. The purpose of this proposed amendment is to keep the subsection consistent. This proposed amendment is necessary to provide clarity and eliminate confusion.

California Code of Regulations section 2696.8 - Delete

The proposed amendment deletes the entire subsection as the regulation simply repeats existing law and serves no meaningful purpose. This proposed amendment is necessary to simplify the mediation process.

California Code of Regulations section 2696.9 – Amend and Renumber to 2696.7

One purpose of the proposed amendments to subsections (a) and (b) is to renumber the references to subsection 2696.6(c). The deletion of paragraphs (3) through (5) of subsection (c) is due to the fact that these requirements are already set forth in statute (see California Insurance Code section 10089.81), and need not be repeated in these regulations.

Section (e) is deleted as the cost of mediation is specifically outlined in the insurance code. The deletion of proposed subsection (e) of “including the Mediator Report Form referenced in Section 2696.10(b) is made, as this language is unnecessary.

The amendments also change a reference to another section which was renumbered. This proposed amendment is necessary to ensure consistency.

California Code of Regulations section 2696.10 –Amend and Renumber to 2696.8

The purpose of this proposed amendment is remove some reporting requirements and change a reference from a section proposed to be deleted. The proposed amendment is necessary to simplify the mediation process and eliminate duplication of language that already exists in current law.

IDENTIFICATION OF STUDIES AND REPORTS

CDI did not rely upon any technical, theoretical and/or empirical study, report or similar document in proposing this regulation.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of the proposed regulation would not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

Performance standards were considered however as the requirement to include automobile collision and automobile physical damage coverage to the mediation program does not lend itself to performance standards, performance standards were rejected because they would be impracticable, vague or otherwise ineffective given the nature of the objective.

Prescriptive standards are more efficient in this context because, unlike performance standards, they provide the affected entities a means of determining with certainty and exactitude the type of claims subject to mediation and procedures involved. Further, the enabling statute requires specific procedures be identified and as such performance standards are not appropriate.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed regulations do not affect small businesses.

Date: _____

JOHN GARAMENDI
Insurance Commissioner

By: _____
Lara Sweat
Staff Counsel